

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

USDC NO. 1:09-11705-NG

JONATHAN GREEN
Plaintiff,

v.

TIMOTHY McCARTHY, the CITY
OF BOSTON, the
COMMISSIONER OF THE
BOSTON POLICE DEPARTMENT
EDWARD DAVIS,
Defendants.

**DEFENDANT CITY OF BOSTON'S LOCAL RULE 56.1 STATEMENT OF FACTS AND
SUPPORTING DOCUMENTATION IN SUPPORT OF ITS MOTION FOR SUMMARY
JUDGMENT¹**

Pursuant to L.R. 56.1, the City of Boston and Police Commissioner Edward Davis ("City Defendants") submit the following statement of material facts of record to which there is no genuine dispute.² The City states the Plaintiff cannot adduce any evidence to support Counts V-VII of his *Complaint* (attached hereto as "Exhibit B"), which raises a claim of inadequate training and supervision of Officer Timothy McCarthy. In support of their Motion, the City and Commissioner Davis hereby incorporate by reference the *Officer McCarthy's Statement of Undisputed Facts in Support of his Motion for Summary Judgment* ("Officer McCarthy's Facts"). In further support, the City Defendants submit the following undisputed facts.

¹ All of the supporting documents attached hereto are true and accurate copies. See Exhibit A, *Affidavit of Counsel*.

² These facts are deemed undisputed for the sole purpose of the City's Motion for Summary Judgment.

1. Officer McCarthy attended the Boston Police Academy from October 2005 to May 2006, graduating from the Academy in May 2006. Exhibit C, *Affidavit of Timothy McCarthy*, ¶ 11.

2. At the Academy Officer McCarthy received training on various areas of law enforcement, including but not limited to, constitutional law, state and federal civil rights, criminal law, crisis intervention, conflict resolution, interpersonal relations, ethics, defensive tactics, use of force, written communications, and the Boston Police Department's Rules, Regulations and Special Orders. Exhibit C, at ¶ 12.

3. At the Academy, Officer McCarthy was instructed on the use of non lethal force and that all of his actions taken during the course of an arrest must be "reasonable." Exhibit C, at ¶ 13.

4. Throughout Officer McCarthy's career, he has received follow up and additional training through in-service trainings. Exhibit C, at ¶ 14.

5. In his career as a police officer, Officer McCarthy has made approximately 300 arrests. Prior to the Plaintiff's allegation of excessive force, Officer McCarthy had never been disciplined for the use of force, nor had any citizen made a complaint to the Boston police department about his use force during the course of an arrest. Exhibit C, at ¶ 15.

6. The Boston Police Department Rules 303, 303A and Rule 304 direct all police officers to only use force that is "reasonable." Exhibit D, pp. 3, 5, 12-14.

7. The Plaintiff has not identified an expert who he will use to establish his claim for inadequate training and/or supervision. See Exhibit E, *Defendant City of Boston's First Set of Interrogatories to Plaintiff Jonathan Green*, Interrogatory No. 18 (July 29, 2010)³; *Defendant*

³ The Plaintiff has never supplemented this discovery request.

Edward M. Davis' First Set of Interrogatories to Plaintiff Jonathan Green, Interrogatory No. 18 (July 29, 2010); Defendant Timothy McCarthy's First Set of Interrogatories to Plaintiff Jonathan Green, Interrogatory No. 19 (July 29, 2010); Plaintiff Jonathan Green's Reply to the First Set of Interrogatories of Defendant Edward M. Davis, Answer No. 18 (December 7, 2010); Plaintiff Jonathan Green's Reply to the First Set of Interrogatories of Defendants Timothy McCarthy, Answer No. 19 (December 7, 2010); Plaintiff Jonathan Green's Reply to the First Set of Interrogatories of Defendant City of Boston, Answer No. 18 (December 7, 2010).

CERTIFICATE OF SERVICE

I hereby certify that on this day, a copy of this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants.

May 21, 2012 /s/ Lisa Skehill Maki
Date Lisa Skehill Maki

Respectfully submitted,
DEFENDANTS, CITY OF BOSTON AND
EDWARD M. DAVIS
William F. Sinnott,
Corporation Counsel

By their attorneys,

/s/ Lisa Skehill Maki
Lisa Skehill Maki, BBO # 675344
Michelle Hinkley BBO # 675609
Assistant Corporation Counsel
City of Boston Law Department
One City Hall Plaza, Room 615
Boston, MA 02201
(617) 635-4022 (Maki)
(617) 635-3238 (Hinkley)
Lisa.Maki@cityofboston.gov
Michelle.Hinkley @cityofboston.gov

7.1 Certification

Undersigned counsel certifies that on May 21, 2012, pursuant to LR, D. Mass. 7.1(a)(2), counsel for the Defendant, City of Boston, Michelle Hinkley, attempted to confer with counsel for the Plaintiff and was unable to reach him in order to resolve or narrow the issues.

Date: May 21, 2012

/s/ Lisa Skehill Maki
Lisa Skehill Maki